

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Establishment of a Public Purpose Program
Surcharge Pursuant to Assembly Bill (AB) 1002.

Rulemaking 02-10-001

**ASSIGNED COMMISSIONER'S RULING DETERMINING THE CATEGORY,
NEED FOR HEARING, SCOPE, AND SCHEDULE OF THIS PROCEEDING**

Summary

This ruling sets forth the procedural schedule, assigns a principal hearing officer, and addresses the scope of the proceeding. This ruling follows a prehearing conference (PHC) held on February 5, 2003, pursuant to Rules 6(c) and 6.3 of the Commission's Rules of Practice and Procedure. (Rules)

Background

On October 3, 2002, the Commission issued Rulemaking (R.) 02-10-001, to determine broad policy issues pertaining to the natural gas surcharge authorized by Assembly Bill (AB) 1002 (Stats. 2000, Ch. No. 932) and to adopt a long-term framework for implementing AB 1002.

As required by Rule 6(c)(2), the Commission preliminarily determined in R.02-10-001, that: (1) the category for this proceeding is "quasi-legislative";¹ and (2) that hearings may be required.²

¹ Rule 5(d), defines a "quasi-legislative" proceeding as one in which the Commission establishes policy or rules affecting a class of regulated entities.

Parties³ submitted comments and reply comments on November 12 and 27, 2002, respectively. Pursuant to Rule 6(c)(2), parties were given an opportunity to include in their comments their objections to the preliminary determinations contained in R.02-10-001. No party objected to the preliminary determinations regarding the category, scope, and schedule of this proceeding.

Category of Proceeding

Pursuant to Rule 6(c)(2), I affirm the Commission's preliminary determination in R.02-10-001 that the category for this proceeding is "quasi-legislative."

² As defined in Rule 8(f)(2), formal hearings in quasi-legislative proceedings include hearings at which testimony is offered of legislative facts, i.e., general facts that help the Commission decide questions of law, policy, and discretion, but do not include hearings at which testimony is offered on adjudicative facts. Adjudicative facts answer questions such as who did what, where, when how, why and with what motive or intent.

³ R.02-10-001 names Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), San Diego Gas and Electric Company (SDG&E), Avista Utilities, Alpine Natural Gas Operating Company (Alpine), Southern California Edison Company (Edison), Southwest Gas Corporation, West Coast Gas Company, and Mountain Utilities as Respondents.

An Assigned Administrative Law Judge (ALJ) Ruling on October 25, 2002, excused Mountain Utilities from participation in the proceeding. An ALJ Ruling on November 15, 2002, excused Edison as a Respondent. An ALJ Ruling on February 20, 2003, excused Avista Utilities from participation in research and development issues, and excused West Coast Gas Company from participation. An ALJ Ruling on April 8, 2003, excused Alpine from further participation.

Need for Evidentiary Hearings

Two parties recommended the need for evidentiary hearings to develop a record regarding research and development (R&D) issues.⁴ No parties recommended evidentiary hearings to resolve administrative and AB 1002 implementation issues. As discussed below, I agree that R&D issues need to be fully developed through evidentiary hearings and therefore I am dividing this proceeding into two phases. The first phase (Phase One) will resolve issues concerning policy and implementation of AB 1002. The second phase (Phase Two) will address R&D issues, including defining public interest R&D, project identification and evaluation, and establishing funding levels.

At the PHC, parties agreed that issues concerning the policy and implementation of AB 1002 could be resolved through a workshop and a data request procedure. I anticipate that this workshop, and the data request procedure, will ensure both the full and fair participation of all involved in this phase of the proceeding, and create a sound decisionmaking record. No issues at this time automatically dictate a requirement for evidentiary hearings in this phase of the proceeding, but we would reconsider that requirement if necessary.

Scope of Proceeding

Following the PHC, parties commented on issues to be addressed in workshops. As discussed, a workshop will address Phase One administrative and AB 1002 implementation issues. Attached is a list identifying the issues to be addressed in this workshop.⁵

⁴ These R&D issues involve establishing an R&D budget, funding levels, and program evaluation.

⁵ Attachment A (Administrative and Implementation issues)

R&D issues in Phase Two, including the scheduling of testimony and hearings, will be determined in an assigned Administrative Law Judge (ALJ) ruling.

Certain comments from parties suggested that implementation workshop issues should include determination of public purpose program (PPP) ratemaking matters including adjustments to existing PPP accounts, changes in legislatively mandated procedures, and evaluations of PPP programs other than R&D programs (such as EE, LIEE and CARE). However, these matters are being addressed in other proceedings and are not within the scope of this proceeding.

Currently, gas public interest R&D projects are considered in general rate cases. As public interest R&D projects may be funded by the gas surcharge, evaluation of R&D programs and specific projects should be considered in this proceeding.

Schedule of Proceeding

At the PHC, ALJ DeBerry proposed a preliminary schedule for identification of the workshop issues, data requests⁶ and responses, and workshop dates. In order to give parties sufficient time to prepare for the workshop, I have scheduled the Phase One workshop for May 7-9, 2003 dates that previously were set for R&D issues. I have added a date for a workshop report (Energy Division's responsibility), and comments on the workshop report. Since testimony and evidentiary hearings were not anticipated at the PHC, a preliminary schedule was not established for R&D issues. In order to provide

⁶ Data requests pertaining to Phase One issues should be served on parties within one week of the date of this Ruling. Parties must respond to data requests by May 5, 2003. This time has been shortened in order to meet the workshop schedule.

flexibility, the scheduling of testimony and evidentiary hearings for R&D issues will be determined through an assigned ALJ ruling. In no event shall a final decision be issued any later than 18 months from the date that R.02-10-001 was issued.

Proposed Schedule

Rulemaking Issued	October 3, 2002
Comments Filed	November 12, 2002
Reply Comments Filed	November 27, 2002
Prehearing Conference	February 5, 2003
Comments on Workshop Issues Due	February 14, 2003
Workshop on Administrative Matters and Implementation	May 7-9, 2003
Workshop Report filed by the Energy Division	June 16, 2003
Comments on Workshop Report	June 30, 2003
Testimony on R&D Issues	To Be Determined ⁷
Evidentiary Hearings on R&D Issues	To Be Determined ⁸
Briefs on R&D Issues	To Be Determined ⁹

Ex Parte Communications and Reporting Requirements

This ruling contains a final determination that hearings are not required in the first phase of this proceeding. Therefore, pursuant to Rule 7(e), there are no restrictions on ex parte communications in the first phase of this proceeding, and there is no need to report any ex parte communications that occur.¹⁰

⁷ Date to be determined by assigned ALJ ruling.

⁸ *Id.*

⁹ *Id.*

¹⁰ This ruling also contains an appealable determination that the category of this proceeding is quasi-legislative.

This ruling also contains a final determination that hearings are required in the second phase of this proceeding. Therefore, except as provided in Rule 7(c), ex parte communications are prohibited in the second phase of this proceeding.

Presiding Officer

As the Assigned Commissioner, I am designated as the Presiding Officer, except in my absence, ALJ Bruce DeBerry is designated as the presiding officer (Rule 5(k) and Rule 6(c)(1)).

IT IS RULED that:

1. This proceeding is categorized as quasi-legislative.
2. There shall be no evidentiary hearings in Phase One of this proceeding.
3. Workshop Issues will be as provided in Attachment A.
4. There are no restrictions on ex parte communications for those issues to be determined in Phase One of this proceeding.
5. Ex parte communications are prohibited, except as provided in Rule 7(c) for the R&D issues to be determined in Phase Two of this proceeding.
6. The scope of this proceeding is to implement Assembly Bill 1002 as discussed in this ruling.
7. The proposed schedule is set forth in this ruling. In no event shall a final decision be issued later than 18 months from the date that Rulemaking 02-10-001 was issued.

Dated April 22, 2003, at San Francisco, California.

/s/ LORETTA LYNCH

Loretta Lynch
Assigned Commissioner

ATTACHMENT A

“BOE” refers to State Board of Equalization

“PPP” refers to Public Purpose Program

“Pub. Util.” refers to Public Utilities

“Fund” refers to Gas Consumption Surcharge Fund

Workshop #1: Administrative and Implementation.

A. State Board of Equalization:

1. Discussion of BOE letter of February 18, 2003, regarding the definition and clarification of various provisions of Pub. Util. Code § 890 etc., and utility billing and collection practices.

- ***Exemptions***

2. Does the definition of “consumption” under Pub. Util. Code § 896 exempting assessment of the PPP gas surcharge on certain uses of gas require further clarification?
3. Can gas consumers claim a partial exemption from the PPP gas surcharge?
4. What processes should be instituted to ensure that exempt gas use is not assessed the PPP gas surcharge?

- ***Interstate pipeline customers***

5. How can BOE identify the existence of interstate pipeline customers subject to the PPP gas surcharge and how can BOE enforce the requirement that these customers register with BOE (see Pub. Util. Code § 891(d))?
6. Should the utilities assist BOE in the identification of interstate pipeline customers?

- ***Other***

7. Are there any BOE related limitations regarding how often PPP gas surcharge rates can change?
8. How can utilities assist BOE verify the amount of gas used by interstate pipeline customers and utility customers subject to the PPP gas surcharge?
9. Are there any confidentiality issues concerning the identity of interstate pipeline customers, amount of remittances to BOE, or related issues?
11. What type of accounting and reporting system should be established to track interstate pipeline customer remittances and who should administer this account? What processes should be used to communicate this information to utilities and the Commission?
12. How do we implement Pub. Util. Code § 890(b)(2)?
13. Should the PPP gas surcharge be considered a “tax” and, if so, what are the ramifications of this designation?
14. How should utilities notify BOE of its “status,” as required by Pub. Util. Code § 891?
15. How can utilities assist BOE notify each person who consumes natural gas delivered by an interstate pipeline of the surcharge rate, as required by Pub. Util. Code 890(h)?

B. Implementation:

1. How should the utilities ensure that exempt gas consumption is not assessed the PPP surcharge?
2. How should the Commission insure that an interstate pipeline customer pays the same PPP surcharge rate as if it received utility service (*see* Pub. Util. Code § 890(e))?

- ***Removal of PPP funding in rates***

3. How should the Commission interpret the phrase "... funding for these programs shall be removed from the rates of gas utilities," as specified in Pub. Util. Code § 890 (a)?
4. How should the utilities remove the PPP funding from their rates as contemplated by Pub. Util. Code § 890(a)?

- ***Volume of Retail Natural Gas***

5. How should the Commission "... determine the total volume of retail gas transported within the service territory of a utility gas provider not subject to exemption under Pub. Util. Code § 896, for the purpose of establishing the surcharge rate. " (See Pub. Util. Code § 890(e)?)
6. Does the Commission need to determine interstate pipeline customer throughput, if so, how should this be done?
7. What throughput figures should be used for calculating the surcharge rate and what are the sources of this information?

- ***PPP gas surcharge rate cost development***

8. What public purpose program costs should be included in the development of the PPP surcharge rate (e.g., Commission adopted program year budgets, forecasted CARE subsidies, administrative costs, etc.) in reference to Pub. Util. Code § 890 (d)?
9. What PPP costs should utilities use if program year costs are not adopted when proposed PPP gas surcharge rates are required to be filed (e.g., use previous program year budget, use forecast costs, etc.) and what related accounting procedures should be instituted in this case?

10. Should the utilities true-up their PPP balancing accounts when they submit their proposed PPP gas surcharge rates; are there amortization or “rate shock” issues that need to be considered?
11. Should the utilities recover finance or carrying-costs they may incur associated with the remittance of funds to BOE and the eventual reimbursement to the utility and, if so, should these costs be recovered through the PPP gas surcharge rate?
12. How should finance or carrying-costs associated with the remittance of funds to BOE and the eventual reimbursement to the utility be computed?
13. Should an F&U (franchise fee and uncollectibles) cost component be factored into the PPP gas surcharge rate?

- ***Frequency of PPP gas surcharge rate changes***

14. Are there any limitations (i.e., legal, administrative, etc.) to revising the PPP gas surcharge rate more than once per year?
15. Should the PPP gas surcharge rate change more than once per year given any limitations or still be set January 1 of each year?
 - ***Utility specific PPP gas surcharge vs. statewide average PPP gas surcharge***
16. Should the PPP gas surcharge rate be utility specific?
17. Should the PPP gas surcharge be a statewide rate; is this permissible under the Pub. Util. Code?
18. How would a statewide PPP gas surcharge rate be calculated?

- ***Small Utilities***

19. Should small utilities base their PPP gas surcharge rate on their specific program costs or some other mechanism?

C. Administrative:

1. What filing procedures should the utilities use to present their proposed PPP gas surcharge rates to the Commission (e.g., use of an advice letter, application, etc.)?
2. When should the utilities file their proposed PPP surcharge rate request?
3. What supporting documentation, workpapers and related information should the utilities provide with their proposed PPP gas surcharge rate filing?
4. How should utilities present the approved PPP gas surcharge rates in their tariff (e.g., through a separate surcharge rate schedule, etc.)?

D. Accounting:

1. What utility accounting procedures are appropriate to track remittances to BOE and reimbursements from the Gas Consumption Surcharge Fund?
2. What utility accounting procedures are appropriate for recording finance or carrying-costs?

E. Reimbursements from the Gas Consumption Surcharge Fund:

1. Should utilities be allowed to only recover actual public purpose program expenditures not exceeding Commission authorized budgets subject to a maximum based on the amount of BOE remittances?
2. Should the total amount remitted to BOE be returned to the utility regardless of program expenditures and, if so, what type of accounting procedures would be appropriate?

3. How often should utilities be reimbursed from the Fund (e.g., quarterly, etc.)?
4. What type of claim procedure, supporting documentation, etc., should the utilities provide in order to be reimbursed from the Fund?
5. Should the interstate pipeline customer Fund contributions be allocated to the utilities, and, if so, how should these be allocated?
6. How should the determination be made of the service territory in which an interstate pipeline customer is located and what processes should be used to communicate this information?

F. Municipalities:

1. How should the Commission determine which municipal utilities are required to pay into the Fund and which are exempt under Pub. Util. Code § 898?
2. How should municipalities be reimbursed from the Fund; what sort of documentation and claim procedure should be established for municipalities?
3. For those municipalities required to pay into the Fund, what PPP surcharge rate should they use?

G. Other:

1. How should the PPP gas surcharge appear on utility customer bills?

(END OF ATTACHMENT A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Determining the Category, Need for Hearing, Scope, and Schedule of This Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated April 22, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.